

100TH CONGRESS  
1ST SESSION

H.R. 3440

To direct the Secretary of Health and Human Services to promulgate fire safety standards for cigarettes and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 1987

Mr. MOAKLEY (for himself, Mr. WAXMAN, Mr. WHITTAKER, Mr. BIAGGI, Mrs. BOXEE, and Mr. CONYERS) introduced the following bill; which was referred to the Committee on Energy and Commerce

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A BILL

To direct the Secretary of Health and Human Services to promulgate fire safety standards for cigarettes and for other purposes.

1       *Be it enacted by the Senate and House of Representa-  
2       tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE, FINDINGS.**

4       (a) **SHORT TITLE.**—This Act may be cited as “Fire  
5       Safe Cigarette Act of 1987”.

6       (b) **FINDINGS.**—The Congress finds that—

7               (1) cigarette ignited fires are the leading cause of  
8       fire deaths in the United States,

5 (3) the final report of the Technical Study Group  
6 on Cigarette and Little Cigar Fire Safety under the  
7 Cigarette Safety Act of 1984 has determined that it is  
8 technically feasible to produce a cigarette with less  
9 propensity to ignite fires,

10 (4) it is appropriate for the Congress to require by  
11 law the establishment of a fire safety standard for the  
12 manufacture and importation of cigarettes,

13 (5) the value of a fire safety standard which will  
14 prevent property damage and personal injury and loss  
15 of life is economically incalculable, and

16 (6) it is appropriate that the regulatory expertise  
17 of the Food and Drug Administration be used to imple-  
18 ment a fire safety standard.

## 19 SEC. 2. FIRE SAFETY STANDARD.

20 (a) IN GENERAL.—Not later than one year after the  
21 date of the enactment of this Act, the Secretary shall by rule  
22 issue a fire safety standard for cigarettes to reduce the risk of  
23 ignition presented by cigarettes. In establishing the standard  
24 the Secretary shall—

4 (2) take into account the findings in the report of  
5 the Technical Study Group on Cigarette and Little  
6 Cigar Fire Safety under the Cigarette Safety Act of  
7 1984 (15 U.S.C. 2054 note).

8 (b) STOCKPILING.—The Secretary shall include in the  
9 rule issued under subsection (a) a prohibition of stockpiling of  
10 cigarettes to which the standard issued under subsection (a)  
11 will apply. For purposes of this subsection, the term "stock-  
12 pile" means the manufacturing or importing of a cigarette  
13 between the date a standard is issued under subsection (a)  
14 and the date the standard is to take effect at a rate greater  
15 than the rate the cigarettes were manufactured or imported  
16 for the one year period ending on the date the standard was  
17 issued.

18 (c) PROCEDURE.—The rule under subsection (a) shall be  
19 issued—

20 (1) in accordance with section 553 of title 5,  
21 United States Code, except that if the rule is signifi-  
22 cantly different from the recommendation of the Tech-  
23 nical Study Group on Cigarette and Little Cigar Fire  
24 Safety under the Cigarette Safety Act of 1984 the  
25 Secretary shall include in the statement under subsec-

1 tion (c) of such section an explanation for the differ-  
2 ence, and

3 (2) without regard for the requirements of Executive  
4 Order 12291.

5 (d) EFFECTIVE DATE.—The Secretary shall prescribe  
6 the effective date of the rule issued under subsection (a),  
7 except that such date may not be later than 2 years after the  
8 date of the enactment of this Act.

9 (e) JUDICIAL REVIEW.—

10 (1) Any person who is adversely affected by a rule  
11 issued under subsection (a) may, at any time before the  
12 60th day after the Secretary issues the rule, file a peti-  
13 tion with the United States Court of Appeals for the  
14 District of Columbia Circuit or for any other circuit in  
15 which such person resides or has its principal place of  
16 business to obtain judicial review of the rule. A copy of  
17 the petition shall be forthwith transmitted by the clerk  
18 of the court to the Secretary. The Secretary shall file  
19 in the court the record of the proceedings on which the  
20 Secretary based the rule as provided in section 2112 of  
21 title 28, United States Code.

22 (2) If the petitioner applies to the court for leave  
23 to adduce additional evidence, and shows to the satis-  
24 faction of the court that such additional evidence is  
25 material and that there was no opportunity to adduce

1 such evidence in the proceeding before the Secretary,  
2 the court may order such additional evidence (and evi-  
3 dence in rebuttal thereof) to be taken before the Secre-  
4 tary in a hearing or in such other manner, and upon  
5 such terms and conditions, as the court deems proper.  
6 The Secretary may modify the Secretary's findings as  
7 to the facts, or make new findings, by reason of the  
8 additional evidence so taken, and the Secretary shall  
9 file such modified or new findings, and the Secretary's  
10 recommendations, if any, for the modification of the  
11 rule.

12 (3) Upon the filing of a petition under paragraph  
13 (1), the court shall have jurisdiction to review the rule  
14 of the Secretary, as modified, in accordance with chap-  
15 ter 7 of title 5, United States Code.

16 (f) **IMPLEMENTATION.**—The Secretary shall use  
17 the Food and Drug Administration to carry out this  
18 Act.

19 **SEC. 3. ENFORCEMENT.**

20 (a) **PROHIBITION.**—No person may manufacture or  
21 import a cigarette unless the cigarette is in compliance with a  
22 fire safety standard issued under section 2(a).

23 (b) **PENALTY.**—A violation of subsection (a) shall be  
24 considered a violation of section 301 of the Federal Food,  
25 Drug, and Cosmetic Act.

## 1 SEC. 4. PREEMPTION.

2 (a) IN GENERAL.—This Act and the fire safety standard  
3 promulgated under section 2(a) do not preempt or otherwise  
4 affect in any way any law of a State or political subdivision  
5 which prescribes a fire safety standard for cigarettes which is  
6 more stringent than the standard promulgated under section  
7 2(a).

8 (b) DEFENSES.—In any civil action for damages compli-  
9 ance with the fire safety standard promulgated under section  
10 2(a) may not be admitted as a defense.

## 11 SEC. 5. DEFINITIONS.

12 For purposes of this Act:

13 (1) The term “Secretary” means the Secretary of  
14 Health and Human Services.

15 (2) The term “cigarette” has the meaning pre-  
16 scribed by section 3 of the Federal Cigarette Labeling  
17 and Advertising Act.

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